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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Applications for Consent to the)
Transfer of Control of Licenses and)
Section 214 Authorizations from)
Ameritech Corporation, Transferor,)
to SBC Communications Inc.,)
Transferee)

CC Docket No. 98-141

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OFFICE OF THE SECRETARY

COMMENTS OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
ON THE PROPOSED CONDITIONS

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SUMMARY

CompTel endorses the goals of the Commission in its review of the SBC/Ameritech merger application, and appreciates the enormous efforts of the staff in attempting to negotiate conditions that could accomplish the goals of protecting consumers and promoting competition in the wake of a merger of two large incumbent local exchange carriers -- companies that will control, post-merger, about 38 percent of the nation's access lines.

Despite the Commission staff's best efforts, however, CompTel is compelled to conclude that the proposed conditions fall far short of those necessary to justify approval of this merger application. They do not offer competitors increased ability to penetrate local markets, and in many respects offer competitors less than the law currently provides. In many cases, the conditions simply require SBC/Ameritech to obey the law. Finally, those conditions that do move the ball ahead do not go far enough to have any significant impact on the consumer and competitive harms of the proposed merger.

Many of the conditions violate the nondiscrimination provisions that are at the heart of the 1996 Act's local competition requirements. These conditions -- which include a grossly restricted offering of network element combinations and severe limitations on the availability of reduced unbundled loop and resale rates -- would allow SBC/Ameritech to treat carriers differently and to impose use

restrictions on network elements and resale that the Act and the FCC have specifically forbidden.

In addition, the proposed separate affiliate structure for advanced services is far too weak to provide any pro-competitive benefits. It permits joint marketing by the ILEC entity and the advanced services affiliate; allows SBC/Ameritech to provide operations, installation and maintenance services to the affiliate; and allows intermingling of equipment, customers, brand names, services, employees and resources between SBC/Ameritech and its affiliate. The conditions also could be read to confer non-incumbent local exchange carrier (ILEC) status on the advanced services affiliate (thereby exempting it from compliance with the market-opening provisions of Section 251(c) of the Act). Such a conclusion is incorrect as a matter of law and would prejudice other pending proceedings. It would permit ILECs to evade their local competition obligations simply by setting up a nominally separate affiliate for their local activities.

Any arguable benefits that might flow from the proposed separate affiliate structure -- in terms of improving competitor access to conditioned loops or collocation, for example -- are unlikely to be realized, moreover. This is so because SBC/Ameritech's affiliate will be able to employ resale of local exchange and advanced services provided by the SBC/Ameritech ILEC entity on a profitable basis, unlike unaffiliated CLECs, and thus will have no need to provide local exchange service or advanced services via unbundled network elements (UNEs) and collocation. In the case of advanced services, the SBC/Ameritech separate affiliate

will also have the *exclusive* ability to engage in DSL line-sharing with the ILEC entity, and for that reason would not be interfacing with the ILEC in the same way as unaffiliated CLECs, even if it were to employ a UNE strategy.

Several of the proposed conditions attempt to provide competitors with greater opportunities than are available today, but even these fall short of what is needed to have a meaningful impact on local competition. For example, SBC/Ameritech's promise to provide line-sharing opportunities for advanced services competitors is so hedged that competitors are unlikely to see that offering materialize soon, if ever -- and in the meantime, SBC/Ameritech's affiliate benefits from the discriminatory availability of an exclusive line-sharing offering from SBC/Ameritech. The discounted "surrogate line sharing" unbundled loop rate for competitors does little to mitigate this competitive harm, since that rate is only available if the affiliate uses line-sharing (which it may not, since it can profitably employ resale), and it still requires the end user customer to purchase two lines in order to obtain competitive DSL services from a CLEC (but not if it obtains them from SBC/Ameritech).

CompTel also supports the positive direction taken in the conditions with respect to OSS for small carriers, cabling in multi-unit properties, most favored nations provisions, and performance standards, but even these measures are too little. For example, the remedies for failure to meet the Tier 2 and 3 standards are not paid to the CLECs that are harmed by SBC/Ameritech's poor

performance, which leaves those CLECs uncompensated for their harms and reduces SBC/Ameritech's incentive to comply.

In sum, the Commission should substantially strengthen the proposed conditions, so that they will, at a minimum, conform with what the 1996 Act and the FCC's rules already require. Specifically, the Commission should:

- Eliminate the restrictions on the availability of the combined network element offering (UNE-P) (including customer class, service, and time restrictions);
- Eliminate limitations on services provided pursuant to the discounted loop rates, both for voice grade and advanced services, and the customer class restrictions on service resale discounts;
- Strengthen the advanced services separate affiliate requirements so that the affiliate must truly deal with the SBC/Ameritech ILEC entity like any other CLEC;
- Prohibit any SBC/Ameritech "CLEC" affiliate from reselling the services (conventional or advanced) of the ILEC entity;
- Prohibit SBC/Ameritech from packaging its incumbent local exchange services with other competitive services, including out-of-region local services;
- Require SBC/Ameritech to wait to offer any DSL line-sharing option to its affiliate until such time as it is able to offer it on a commercial scale to unaffiliated CLECs;
- Eliminate the numerous restrictions on the most-favored-nation (MFN) commitments;
- Eliminate the restrictions on access to cabling in multi-unit properties;
- Require that all performance standards penalties be paid to CLECs, who are the harmed parties when performance standards are not met.

In addition, and regardless of what conditions the Commission eventually decides to impose, the Commission should make clear that the conditions are not relevant to, nor do they prejudice, action by the FCC in other rulemakings (such as the network element remand, the DSL line-sharing proceeding, the advanced services separate affiliate proceeding, the CompTel Section 251(h) declaratory ruling petition, and any Section 271 proceedings). The Commission has important work to do in those proceedings, which will have industry-wide ramifications. It should not, even unintentionally, send the wrong signal through the condition it imposes here.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
I. DESPITE THE COMMISSION STAFF'S BEST EFFORTS, THE PROPOSED CONDITIONS DO NOT ACCOMPLISH THE COMMISSION'S GOALS IN REVIEWING AN RBOC MERGER APPLICATION.	2
II. THE UNE-RELATED CONDITIONS, IN THEIR CURRENT FORM, WILL NOT ACCOMPLISH THE COMMISSION'S GOAL OF PROMOTING LOCAL COMPETITION, AND ARE UNLAWFUL.	7
A. The Proposed UNE Platform Condition Would Hinder the Development of Broad Based Competition for Both Residential and Business Customers.	7
B. The Proposed Restrictions on the Right to Employ UNE Combinations are Unlawful.	11
C. Restrictions That Limit The "Discounted" Residential Loop and Residential Wholesale Price Conditions are Unlawful.	15
D. The Proposed "Compliance with the FCC's Pricing Rules" Condition Is No More Than an Agreement to Comply with Existing Requirements.	18
E. The Proposed "Shared Transport" Commitments Offer Nothing More Than Compliance With FCC Regulations.	19
III. THE PROPOSED CONDITIONS CONTEMPLATE A WEAK SEPARATE AFFILIATE STRUCTURE THAT WOULD PERMIT SUBSTANTIAL JOINT ACTIVITY, SHARING, AND CROSS-SUBSIDIZATION.	20
A. The Proposed Advanced Services Separate Affiliate Structure Provides Few Benefits.	20
B. The Proposed Conditions Risk Prejudgment of the Section 251(h) Issue.	23

C. Additional Structural Safeguards Should Be Imposed On SBC/Ameritech.....	24
D. Whatever Benefits Might Flow From The Proposed Separate Affiliate Structure Would be Lost Due The Availability Of Service Resale And The Exclusive Nature Of The DSL Line- Sharing Proposal.	27
IV. OTHER PROPOSED CONDITIONS MOVE IN THE RIGHT DIRECTION BUT REMAIN INADEQUATE	29
A. The Proposed “Line Sharing” Condition Takes a Positive Step but is Too Restricted and Discriminatory to be Lawful or of any Value as a Merger Condition.....	30
B. The Uniform OSS Proposal and OSS Assistance for Small CLEC Proposal Take the Right Approach but Require Modifications.	33
C. The Promise to Install CLEC-Accessible Cabling in Multi-Unit Properties is a Positive but Inadequate Step.	34
D. The “MFN Arrangements” Condition Reflects a Constructive Concept But Is Too Restricted to Have Any Impact.....	36
IV. THE PROPOSED PERFORMANCE INCENTIVE PLAN IS INADEQUATE AND WOULD NOT ENSURE COMPLIANCE WITH THE 1996 ACT.	38
CONCLUSION	43

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**COMMENTS OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
ON THE PROPOSED CONDITIONS**

The Competitive Telecommunications Association ("CompTel") hereby submits its comments in the above-captioned proceeding on the conditions proposed by SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech") on their proposed merger. These comments are filed pursuant to the July 1, 1999, Public Notice inviting comment on the proposed conditions.

INTRODUCTION

CompTel is a national industry association representing 344 competitive telecommunications service providers and suppliers. CompTel's members include nationwide companies and smaller, regional carriers, providing local, long distance, and Internet services using a diverse mix of entry strategies. Since its inception in 1981, CompTel has advocated policies to promote the development of full and fair competition in the provision of communications services. CompTel's role on both the federal and state levels is to ensure that

companies of different sizes and with different entry strategies have a full and equal opportunity to compete in all communications service markets.

I. DESPITE THE COMMISSION STAFF'S BEST EFFORTS, THE PROPOSED CONDITIONS DO NOT ACCOMPLISH THE COMMISSION'S GOALS IN REVIEWING AN RBOC MERGER APPLICATION.

CompTel recognizes and greatly appreciates the enormous efforts of the staff in this proceeding to develop a set of conditions that might promote the development of local competition in the SBC/Ameritech region and mitigate the harmful effects of this mega-merger. While some of the conditions proposed by SBC and Ameritech in this proceeding constitute positive steps, they are not adequate in their current form to address the significant concerns expressed by Chairman William E. Kennard regarding the potential competitive and consumer harms of the proposed merger. ^{1/} Unless substantially strengthened, the proposed conditions will not give the Commission the necessary comfort to permit it to approve this merger.

Many of the conditions also violate the nondiscrimination provisions that are at the heart of the 1996 Act's local competition requirements. These conditions -- which include a grossly restricted offering of network element combinations and severe limitations on the availability of reduced unbundled loop

^{1/} See Letter from William E. Kennard, Chairman, Federal Communications Commission, to Richard C. Notebaert, Chairman and Chief Executive Officer, Ameritech Corporation, and Edward E. Whitacre, Jr. Chairman and Chief Executive Officer, SBC Communications, Inc., CC Docket No. 98-141 (dated April 1, 1999); see also Public Notice, CC Docket No. 98-141 (rel. July 1, 1999), at 1.

and resale rates -- would allow SBC/Ameritech to treat carriers differently and to impose use restrictions on network elements and resale that the Act and the FCC have specifically forbidden. 2/ The Commission simply cannot sanction conditions that violate the Commission's own rules, which embody statutory nondiscrimination standards. Cloaking such discrimination in the language of "promotions" does nothing to avoid the statutory problem or the competitive consequences of such discrimination. 3/

The problems with the proposed conditions fall generally into three categories. First, several of the proposed conditions contain restrictions that are unlawful and that would permit SBC/Ameritech to provide competitors with *less* than what the Telecommunications Act of 1996 ("1996 Act") requires. Second, many of the proposed conditions constitute nothing more than agreements by SBC and Ameritech to simply comply with their *existing* statutory, regulatory, and contractual obligations -- and thus are not meaningful as merger conditions. Third, while some of the proposed conditions move in the right direction, they do not go far enough to have any real impact on the likely competitive and consumer harms of the proposed merger, and thus do not accomplish the Commission's intended goal.

2/ Local Competition Order, CC Docket No. 96-98, at ¶¶ 859-862.

3/ Commission precedent permitting the use of promotional rates under limited circumstances, even if otherwise applicable (which it is not), is irrelevant here because it was adopted under different statutory provisions. See 47 U.S.C. § 202(a).

CompTel focuses in these comments on the major deficiencies 4/ in the proposed conditions, which are the following:

- Unlawful and anticompetitive limitations on access to combinations of network elements (UNE-platform).
- Discriminatory restrictions limiting the availability of discounted loop price.
- Weak separate affiliate structure for xDSL services, which permits substantial joint activity, sharing, and cross-subsidization.
- No defined structure or clear relationships between SBC/Ameritech's ILEC affiliates and its national CLEC subsidiary, the National Local Company (NatLoCo).
- Unlawful and inappropriate limitations on DSL line-sharing.
- Failure of performance standards penalty payments to go to the harmed parties: the competitive local exchange carriers competing with SBC/Ameritech.

In addition to these deficiencies, the conditions contain provisions that would actually create new anticompetitive incentives. In particular, by imposing penalties on SBC/Ameritech for failing to reach benchmarks in achieving the company's national/local strategy, the Commission would unwittingly be creating strong incentives for SBC/Ameritech to use the leverage it will obtain from its vast combined regional footprint to compete outside its region. The national/local strategy that the combined SBC/Ameritech expects to pursue will actually harm competition unless SBC/Ameritech is prevented from exploiting its in-region local

4/ CompTel assumes that other parties will identify and address additional shortcomings in the proposed conditions.

exchange market power -- and none of the proposed conditions address this problem. 5/

The proposed conditions also could have dangerous (though presumably unintended) ramifications for other proceedings, such as the Rule 51.319 UNE Remand Proceeding, 6/ future Section 271 proceedings, 7/ the "Section 706" advanced services separate affiliate proceeding, 8/ the DSL line-sharing rulemaking, 9/ and the CompTel Section 251(h) declaratory ruling petition. 10/ The

5/ In its ex parte presentations to the Commission and at the Commission's May 6, 1999, forum, CompTel urged the Commission to adopt two conditions that were specifically intended to address the ills presented by a merger of this size of two incumbent local exchange carriers who have an avowed strategy of pursuing national/local customers. See, e.g., Ex Parte Notice of CompTel, June 7, 1999, in CC Docket No. 98-141. These conditions were (1) a prohibition on the resale of local exchange service by any in-region "CLEC" affiliates of SBC/Ameritech and (2) a prohibition on the packaging of in-region local service (over which SBC/Ameritech has market power over a huge geographic area) with competitive, out-of-region service. Id. In proposing only these conditions, CompTel focused on the most pernicious aspects of the merger, while recognizing that the Commission would soon be dealing with other important local competition issues on an industry-wide basis - in the UNE remand proceeding, for example.

6/ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Further Notice of Proposed Rulemaking, FCC 99-70, CC Docket No. 96-98, (rel. April 16, 1999).

7/ 47 U.S.C. § 271.

8/ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, rel. August 7, 1998.

9/ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 99-48, rel. March 31, 1999.

10/ Competitive Telecommunications Association, Florida Competitive Carriers Association, and Southeastern Competitive Carriers Association, Petition on

conditions also could have adverse implications for local competition and Section 271 proceedings in the states -- because state commissions may look to these conditions as a "high water mark" for local competition requirements. SBC and Ameritech should not be able -- through self-serving conditions that they themselves have negotiated and drafted -- to both obtain merger approval *and* attempt to pre-decide the outcomes of other proceedings that are critically important to the future of competition and the welfare of consumers.

If permitted, this merger -- and the proposed merger of Bell Atlantic and GTE -- will drastically change the dynamics of the telecommunications market in this country, placing almost 80 percent of the nation's access lines in the hands of two mega-RBOCs. To counter the potential competitive and consumer harms of such consolidation, the Commission must first ensure that it has established effective, competition-promoting safeguards that go beyond promises merely to comply with the Act.

The Commission should substantially strengthen the proposed conditions, so that they will, at a minimum, conform with what the 1996 Act and the FCC's rules already require. The Commission should also make clear that these conditions are not relevant to, nor do they prejudice, action by the FCC in other rulemakings (such as the network element remand, DSL line-sharing, advanced

Defining Certain Incumbent LEC Affiliates as Successors, Assigns, or Comparable Carriers under Section 251(h) of the Communications Act, CC Docket No. 98-39.

services separate affiliate, and Section 271 proceedings) -- rulemakings that will generate additional requirements that also will bind SBC/Ameritech when adopted.

II. THE UNE-RELATED CONDITIONS, IN THEIR CURRENT FORM, WILL NOT ACCOMPLISH THE COMMISSION'S GOAL OF PROMOTING LOCAL COMPETITION, AND ARE UNLAWFUL.

The unbundled network element ("UNE") related conditions in the SBC /Ameritech proposal are both inadequate to promote local competition and unlawful in their design. They contain restrictions that make them so limited as to be effectively meaningless in promoting residential competition; they ignore the need to promote competition for business customers; and they give SBC/Ameritech far too much control over the merger conditions and the options that those conditions are supposed to make available to competitors. The conditions also are unlawful, violating the Act, the Supreme Court's decision, and the FCC's own rules. For the most part, moreover, to the extent that the conditions do not *violate* a rule or statutory provision, they simply constitute an agreement by SBC and Ameritech to comply with existing statutory and regulatory requirements -- and therefore have no place as conditions to a merger.

A. The Proposed UNE Platform Condition Would Hinder the Development of Broad Based Competition for Both Residential and Business Customers.

Broad-based competition for all classes of customers by all types of carriers cannot develop if SBC and Ameritech are allowed to limit competitors' access to combined network elements (the UNE platform) by making those

combinations available only to serve residential customers and even then only subject to other restrictions. Remarkably, the proposed conditions nowhere acknowledge that SBC and Ameritech do not have the right to deny competitors the ability to purchase network elements in their combined state, as the Supreme Court made clear in its January decision. ^{11/} Rather, the implicit (and incorrect) assumption that underlies the conditions is that competitors are not entitled to purchase combinations of elements -- as though pre-Supreme Court law were still in place. Whatever the legal validity of the conditions (which we discuss in the following sections), it is clear that they do not accomplish the Commission's policy goals in reviewing and conditioning this merger to address its competitive problems.

The ability to employ network elements in their combined form is absolutely essential to the development of broad-based competition in *both* the business and residential markets. The use of the UNE platform is the only entry strategy that allows competitors economically to serve a broad base of customers -- both residential and business -- while offering price and service packages that differ from those offered by an ILEC. To compete on a broad basis, CLECs also must have the ability to obtain and use combined UNEs efficiently, quickly, in adequate quantities, and with minimal service disruptions. Consumers (whether business or residential) must be able to shift between carriers -- and thus explore competitive

^{11/} AT&T Corp. v. Iowa Utilities Board, ___ U.S. ___, 119 S.Ct. 721 (1999) ("AT&T Corp.").

alternatives -- rapidly, simply, and inexpensively. ^{12/} The UNE platform is the *only* method of access to UNE combinations that satisfies these conditions today.

The service and customer class restrictions, as well as the time limitations on the SBC/Ameritech platform offering, would make this option unavailable in too many instances for any competitor to rely on it as a means of competing successfully even in the residential market. Rather, to compete broadly (even for residential customers), competitors will be forced to construct duplicative facilities (whether economic or not), or rely on costly, time-consuming, and service-disrupting collocation methods as their only means of obtaining UNE combinations. Broad-based mass-market business and residential competition cannot develop in such an environment.

Moreover, for some smaller companies (including many CompTel members), lack of access to the UNE platform for all services and all customers could prevent them from entering the local market at all, even if their eventual plan

^{12/} As the New York Public Service Commission has stated, a “fully competitive local exchange market; to wit, multiple carriers providing a full range of services throughout New York State” “cannot develop unless customers are able to switch easily to the local exchange provider offering the service, price and quality options that best meets [sic] their needs.” Proceeding on Motion of the Commission to Examine Methods by which Competitive Local Exchange Carriers can Obtain and Combine Unbundled Network Elements, Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom, Inc. d/b/a/ LDDS WorldCom and the Empire Association of Long Distance Telephone Companies, Inc. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of New York Telephone’s Tariff No. 900, Case Nos. 98-C-0690, 95-C-0657, at 35.

is to construct competing local facilities. 13/ Even CLECs that have some of their own network facilities cannot justify installing facilities in every location where they choose to serve customers. In some cases, a mix of CLEC facilities and the UNE platform will be appropriate to serve a customer's needs. This is true, for example, with both residential and business customers that have needs for both high-capacity and low-capacity services. A customer in a single location might require both a DS1 connection to the CLEC switch and several analog voice-grade lines for other purposes (e.g. fax machines). Unrestricted access to the UNE platform also is necessary in order to promote robust competition for multi-location business customers -- such as the very customers SBC/Ameritech is planning to pursue through its national/local strategy. 14/

13/ This condition also prejudices the types of facilities construction that make sense. CompTel members need to spend capital wisely. Sometimes this means investing in local network. But it also may mean investing in xDSL technology, in ATM facilities, or even in software-management systems. The Act and the FCC's local competition rules foster this open process; these conditions do not.

14/ Even if a business customer is located in an area where investment in competing facilities can be justified, that business customer often will have multiple locations, both within a state and in other states. The proposed restrictions on access to the UNE platform could prevent even a "facilities-based" CLEC from successfully competing for that customer's business. Even if the CLEC has facilities to serve the business customer's main location, it may not have facilities to serve its other locations. The UNE platform would enable that CLEC to match the ILEC's multi-location service offer. Without the UNE platform, the CLEC would have to construct facilities, obtain collocation, and so on, in every branch location, just to be able to compete for the company's business. For example, a CLEC with facilities in Illinois but not Michigan might not be able to compete for the business of a customer with offices in Illinois and Michigan if the UNE platform is not available in Michigan.

In contrast, SBC/Ameritech would have far less need for that because it would have the advantage of being the incumbent throughout a wide part of the

B. The Proposed Restrictions on the Right to Employ UNE Combinations are Unlawful.

The proposed UNE platform condition flatly ignores the FCC rules expressly reinstated by the United States Supreme Court in AT&T Corp. v. Iowa Utilities Board. ^{15/} The Supreme Court affirmed the FCC's rule prohibiting incumbent local exchange carriers ("ILECs") from providing access to network elements that the ILEC currently combines. ^{16/} Nothing in the Supreme Court's decision permits the imposition of restrictions on the ability of CLECs to purchase network elements in both their discrete and combined form. The Supreme court has expressly rejected the fundamental premise that different law applies to UNEs in discrete than in combined form:

It [Section 252(c)(3)] forbids incumbents to sabotage network elements that *are* provided in discrete pieces, and thus assuredly contemplates that elements *may* be requested and provide in this form (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements *must* be provided only in this fashion and never in combined form. ^{17/}

country. The advantage of incumbency also would extend even beyond the SBC/Ameritech region if, as discussed below, SBC/Ameritech's CLEC affiliates are allowed to bundled its in-region local offerings with their out-of-region competitive offerings.

^{15/} AT&T Corp. 119 S.Ct. 721.

^{16/} AT&T Corp., 119 S.Ct. at 736-38, upholding 47 C.F.R. § 315(b).

^{17/} Iowa Utilities Board at p. 737 (italics in original, underlining added).

Yet the proposed conditions do precisely this, by limiting the availability of UNEs in combined form -- i.e., by limiting the UNE-P to service to residential customers, and by otherwise limiting its availability even to those customers. 18/

SBC and Ameritech entirely miss the point of the Supreme Court's decision. By limiting the ability of competitors to purchase the UNE platform, SBC and Ameritech are essentially stating that for certain services, certain customers, and that after a certain period of time, SBC and Ameritech will provide network elements only after first separating them from other network elements. In other words, the Joint Applicants propose completely different regimes applicable to discrete UNEs that UNEs in combined form, even though the Supreme Court concluded that the Act does not say, or even remotely imply, that distinction should make a difference. Furthermore, the Supreme Court made clear that ILECs such as SBC and Ameritech may *not*, under any circumstance but one, separate requested

18/ Specifically, SBC and Ameritech state that they would provide the UNE platform: (1) *only* for the provision of service to residential customers, (2) *only* for POTS and Basic Rate Interface ("BRI") ISDN service, (3) *only* in conjunction with unbundled loops that are *not* "discounted" as provided for under the proposed "discounted" loop condition, and (4) *only* during an "Offering Window" that will consist of the shorter of either (a) a period of three years beginning 30 days after the Merger Closing Date, or (b) a period lasting from 30 days after the Merger Closing Date until the month following the date when the sum of resold lines in service under the resale "discount" condition plus the quantity of UNE platforms in service reaches a maximum *chosen by SBC and Ameritech* for each in-region state. Proposed Conditions for FCC Order Approving SBC/Ameritech Merger, Appendix A (filed July 1, 1999) ("Proposed Conditions"), at 26-27. SBC and Ameritech also state that a carrier would only be permitted to use a UNE platform that it has purchased for the shorter of either (1) three years or (2) for so long as a particular UNE platform remains in service at the same location for the same carrier. *Id.* at 26.

network elements that the incumbent currently combines. ^{19/} The *only* situation in which an ILEC may separate combinations of network elements is upon request by the requesting carrier. ^{20/} Thus, SBC's and Ameritech's attempt to insist on separating network elements for certain services and customers, and after a certain period of time, is flatly impermissible under the FCC's rules and the Supreme Court's decision.

The service and customer class restrictions on SBC/Ameritech's UNE platform proposal also violate (1) a requesting carriers' right under Section 251(c)(3) ^{21/} to use network elements to provide any telecommunications service and (2) the nondiscrimination requirements of Section 251(c)(3). ^{22/} In the many instances when the restrictions on the offering will make the platform unavailable, a competitor's only alternative will be to obtain UNE combinations through collocation-based combination methods. This discriminates against competitors in violation of Section 251(c)(3) by imposing on them delays, costs, difficulties, service interruptions, and limitations not incurred or experienced by SBC/Ameritech. The

^{19/} AT&T Corp., 119 S.Ct. at 736-38; 47 U.S.C. § 51.315(b); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15647, para. 293 ("Local Competition Order"), vacated in part sub nom. Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), rev'd in part and remanded in part sub nom. AT&T Corp., 119 S.Ct. 721.

^{20/} Id.

^{21/} 47 U.S.C. § 251(c)(3).

^{22/} 47 U.S.C. § 251(c)(3).

restrictions on SBC/Ameritech's UNE platform offering violates Section 251(c)(3) in other ways as well:

Service Restrictions: SBC and Ameritech unlawfully restrict the services that can be provided over the network element platform to POTS and BRI ISDN. A network element is intended as a *generic* capability that can be used by a CLEC to offer *any* service of its choosing. 23/ Section 51.309(a) of the Commission's rules states that:

[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends. 24/

Placing restrictions on the services that can be offered using UNEs in their combined form denies competitors the right to obtain and use the undifferentiated functionalities of network elements. Indeed, the imposition of such restrictions effectively dictates the services a CLEC will be "allowed" to offer over the network elements it purchases. As made clear by the Act and the Commission's rules, however, the types of services offered by an entrant over the network elements it purchases are *solely* the decision of the entrant. SBC and Ameritech cannot decide what services they will compete against and what services they will not.

23/ 47 U.S.C. 251(c)(3).

24/ 47 C.F.R. § 51.309(a).

Customer Class Restrictions: Restrictions on a CLEC's use of network elements in their combined form based on customer class -- in this instance, permitting the use of the platform only for residential customers -- also violate the nondiscrimination requirements of Section 251(c)(3). SBC and Ameritech are subject to no restrictions whatsoever on their use of network elements to provide services to their customers. Competitive carriers, therefore, must also be free of restrictions on their use of network elements to provide communications services.

C. Restrictions That Limit The "Discounted" Residential Loop and Residential Wholesale Price Conditions are Unlawful.

Cost-based rates for the local loop and other network elements are essential for the development of local exchange competition. As a general matter, therefore, CompTel supports reductions in loop rates that will bring loop rates more in line with costs. SBC/Ameritech's proposed "discounted" residential loop offer, however, is restricted in a manner that is unlawful and that would impede the ability of competitors to provide broad-based local exchange services.

In order to bring the "discounted" loop offering into compliance with the 1996 Act and the FCC's own pricing rules, to make it an effective means of addressing the competitive harms of the merger, and to promote broad based competition, SBC and Ameritech must remove the service and customer class restrictions on its availability. CompTel fully supports the importance of residential competition, and a number of CompTel's members are competing for